

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

x

BLUESTONE COAL CORPORATION, :
a West Virginia Corporation; : Civil Action
and :
DOUBLE-BONUS MINING COMPANY, : No. 2:16-cv-060908
A West Virginia Corporation, :

Plaintiffs, :
: :
v. : Date: October 2, 2018
PINNACLE MINING COMPANY, LLC., :
a Delaware Corporation; :
and TARGET DRILLING, INC., a :
Pennsylvania Corporation; :
SENECA COAL RESOURCES, :
LLC, a Delaware Limited :
Liability Company; :
SENECA NORTH AMERICAN COAL, :
LLC, (SNAC), a Delaware :
Limited Liability Company; :
CLIFFS NATURAL RESOURCES, :
INC., an Ohio Corporation; :
TAM INTERNATIONAL, INC., a :
Delaware Corporation; and :
C&J Well Services, Inc., a :
foreign corporation licensed :
to do business in :
West Virginia under the trade :
name of C&J Energy Services, :

Defendants. :
x

TRANSCRIPT OF SETTLEMENT CONFERENCE HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Plaintiffs:

R. SCOTT LONG, ESQ.
DAVID F. NELSON, ESQ.
Hendrickson & Long
P. O. Box 11070
Charleston, WV 25339

For the Defendants:

JOSHUA A. BERMAN, ESQ.
White & Case
1221 Avenue of the Americas
New York, NY 10020-1095

JOHN J. MEADOWS, ESQ.
Steptoe & Johnson
P. O. Box 1588
Charleston, WV 25326-1588

DOUGLAS C. LASOTA, ESQ.
Marshall Dennehey Warner
Coleman & Goggin
Suite 700
501 Grant Street
Pittsburgh, PA 15219

DENNIS R. ROSE, ESQ.
Hahn Loeser & Parks
Suite 2800
200 Public Square
Cleveland, OH 44114

JOHN L. MACCORKLE, ESQ.
MacCorkle & Lavender
P. O. Box 3283
Charleston, WV 25332

MARK E. GUSTAFSON, ESQ.
White & Case
Suite 2700
555 South Flower Street
Los Angeles, CA 90071

MARC E. WILLIAMS, ESQ.
Nelson Mullins Riley &
Scarborough
P. O. Box 1856
Huntington, WV 25719-1856

STEVEN GRUBBS, ESQ.
Sheehy, Ware & Pappas
909 Fannin St., Ste. 2500
Houston, TX 77010

DAN WORKER, ESQ.
Lewis Brisbois
550 West Adams Street
Suite 300
Chicago, IL 60661

LOUIS A. BOVE', ESQ.
Bodell Bove'
1845 Walnut St. #1100
Philadelphia, PA 19103

DEBRA T. VARNER, ESQ.
McNeer Highland McMunn & Varner
400 W Main Street
Clarksburg, WV 26301

SARAH A. WALLING, ESQ.
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WV 25701-2225

CHARLES A. HAFNER, ESQ.
Nicolaides Fink Thorpe
Michaelides Sullivan
10 South Wacker Drive
Floor 21
Chicago, IL 60606

LOUIS C. LONG, ESQ.
Thomas Thomas & Hafer
525 William Penn Place
Suite 3750
Pittsburgh, PA 15219

JOHN FIXTER, ESQ.

In-House Counsel: GEORGE B. MICKUM
 GARY BROADBENT

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E.
2 Johnston, Chief Judge, United States District Court,
3 Southern District of West Virginia, in Charleston, West
4 Virginia, on October 2, 2018, at 10:10 a.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the
6 Court is Bluestone Coal, et al. v. Pinnacle Mining, et al.,
7 civil action number 2:16-cv-06098, scheduled for a
8 settlement conference.

9 THE COURT: Good morning.

10 SIMULTANEOUS SPEAKERS: Good morning.

11 THE COURT: I almost hesitate to say this, but
12 will counsel please note their appearances?

13 MR. LONG: Scott Long and Dave Nelson for
14 plaintiffs, accompanied by Governor Justice, and his son
15 Jay.

16 MR. BERMAN: Good morning, Judge Johnston. Josh
17 Berman from White & Case on behalf of defendants, Seneca and
18 Pinnacle.

19 MR. LASOTA: Doug LaSota, Your Honor, on behalf of
20 Pinnacle Mining.

21 MR. BERMAN: And I should say, with us, I'm sorry,
22 is the CEO of the company, Mike Zervos.

23 MR. BROADBENT: Gary Broadbent, General Counsel.

24 MR. MEADOWS: John Meadows, Steptoe & Johnson, on
25 behalf of Seneca defendants and Pinnacle.

1 MR. GUSTAFSON: Mark Gustafson, White & Case, on
2 behalf of Seneca.

3 MR. WILLIAMS: Marc Williams from Nelson Mullins
4 on behalf of Cliffs Natural Resources.

5 MR. ROSE: Your Honor, Dennis Rose from Hahn,
6 Loeser & Parks on behalf of Cliffs Natural Resources. We
7 have with us James Graham, Jason Beloso and Shelly Hilbert
8 from Cliffs.

9 THE COURT: Anybody else?

10 MR. GRUBBS: Your Honor, Steven Grubbs. I'm here
11 representing Ironshore United Kingdom.

12 MR. MACCORKLE: John MacCorkle for Ken & Coy.

13 MR. BOVE': Good morning. Lou Bove', Bodeill
14 Bove', on behalf of Zurich.

15 MR. WORKER: Good morning, Your Honor. Dan Worker
16 on behalf of Chubb.

17 MR. HAFNER: Charles Hafner on behalf of Arch.

18 MR. LONG: Louis Long with Thomas, Thomas & Hafer
19 on behalf of Great Midwest.

20 MS. VARNER: Debra Varner, Your Honor, on behalf
21 of Starr, and I have Paul Zatopek with me.

22 MS. WALLING: Good morning, Your Honor. Sarah
23 Walling with Jenkins Fenstermaker on behalf of Axis and
24 Aspen.

25 THE COURT: Anyone else? All right.

1 MR. FIXTER: Sorry, Your Honor. John Fixter on
2 behalf of XL Catlin.

3 THE COURT: All right. I appreciate you all being
4 here today. This is quite a gathering. And my hope is that
5 it will -- that everyone will work diligently toward finding
6 a resolution of this matter. I've set aside today and
7 tomorrow to do that. I intend to work hard on it.

8 Some of you have been through this process with me
9 before and you've seen that I've managed to get some tough
10 cases settled. So, that's my intent, and that's the way I
11 intend to proceed today, and I intend to be very focused on
12 that.

13 Let me ask, I have received five submissions
14 confidentially from the parties. I read those over. For
15 the most part, the parties complied with my directive to
16 file a ten-page-ish memo, except for Pinnacle that added 250
17 documents, pages of documents to theirs, which I did not
18 read because I didn't ask for 200 pages, 250 pages of
19 documents, but I got the gist of the -- of your information.

20 What I think I'm going to do is -- well, first of all,
21 I'm going to inquire and see if I understand the state,
22 current state, of the settlement negotiations that have
23 occurred.

24 First of all, as everyone knows, the -- there's already
25 been one settlement with -- the name of the parties is

1 escaping me right now.

2 MR. LONG: Target.

3 THE COURT: That's right, Target. There's already
4 been one settlement with them. And the -- what's the last
5 demand that Bluestone made?

6 MR. LONG: \$93 million.

7 THE COURT: Okay. And what offers have been
8 placed on the table thus far?

9 MR. BERMAN: Judge, from the defendants' side?

10 THE COURT: Yes.

11 MR. BERMAN: No counter to that amount of money
12 because -- for several reasons. One --

13 THE COURT: No, no, no, no. I don't want to hear
14 it right now. I just want to hear numbers right now. I
15 want to see where the numbers stand and I get into these
16 things and I -- what I'm doing is interrupting a ping pong
17 game and I want to know which side of the court the ball is
18 on.

19 MR. BERMAN: That about describes it, is about a
20 \$93 million gap in our positions. Now, we're here, of
21 course, willing to put money on the table, but we haven't
22 made any other offer.

23 THE COURT: Well, somebody offered money --

24 MR. ROSE: Your Honor --

25 THE COURT: -- that was on the table at some

1 point.

2 MR. ROSE: Your Honor, Cliffs had offered \$250,000
3 to get the ball rolling at the mediation and that's where it
4 stopped.

5 THE COURT: All right. I thought Bluestone had a
6 demand on the table that was lower than that.

7 MR. LONG: We did, Your Honor. It was an
8 independent demand for Pinnacle only and that was \$41.5.

9 THE COURT: All right. So, nobody else has
10 offered anything, other than Cliffs?

11 MR. WILLIAMS: Correct.

12 THE COURT: All right. Fair enough.

13 Here's what I think I'm going to do. All of the
14 insurance companies that are here today, one way or another,
15 I understand there are reservations of rights and all that
16 good stuff, but all of them, one way or another, are
17 liability insurers for the defense side, correct?

18 MR. NELSON: That's not correct, Your Honor. Axis
19 and Aspen, Your Honor had requested that they be here, and
20 they were a first-party property carrier for the Bluestone
21 companies at the time this happened.

22 THE COURT: Okay.

23 MR. NELSON: There's been no -- the claims have
24 not been pursued with them for the last year and a half, two
25 years.

1 THE COURT: You explained that before.

2 MR. NELSON: But we got them here, as Your Honor
3 had requested. There's been no collection made against
4 them. There are no liens from them.

5 THE COURT: All right. That's fine.

6 Well, I think what I'm going to do is, there are so
7 many companies, parties, et cetera, here that we have
8 Bluestone and pretty much everybody else. So, what I think
9 I'm going to do is, I'm going to split -- I'm going to split
10 you all up, but I'm going to ask the Bluestone -- I'm going
11 to put you all in the jury room.

12 And then, what I'm probably going to do is invite
13 others to come in and see me as the moment calls for. So --
14 and I will leave everybody else here in the courtroom for
15 the time being.

16 And if you -- I guess there was a sign-in sheet that
17 was done. Has everybody -- has everybody signed in so we
18 know who you are? It's particularly important that Ms.
19 Shamblin, my law clerk, knows who you are because she is the
20 one who will be coming to get you when the time comes.

21 The -- Cliffs filed a summary, very helpful summary, of
22 all the coverages that was -- if nothing else, that -- and
23 everybody on this list is here, as far as you know?

24 MR. ROSE: We -- we believe -- believe so.

25 THE COURT: I mean, I had everybody note their

1 appearances and I have a list in front of me. So, let me
2 just make sure everybody on that list is here.

3 AIG is here?

4 MR. DIDONATO: Here, Your Honor.

5 THE COURT: Yeah. Well, they didn't note their
6 appearances before. So, who is here on behalf of AIG?

7 MR. DIDONATO: Michael Didonato, adjustor for
8 Pinnacle.

9 MS. RICU-SICART: We don't have counsel.

10 THE COURT: Speak up.

11 MS. RICU-SICART: We're here as the adjustors, so
12 that's why we didn't note our appearances.

13 THE COURT: All right. Fair enough. Give me your
14 names again. My court reporter couldn't hear you.

15 MS. RICU-SICART: Erin Ricu-Sicart,
16 R-i-c-u-S-i-c-a-r-t, and I'm here for Cliffs.

17 MR. DIDONATO: Michael Didonato, D-i-d-o-n-a-t-o,
18 adjustor for Pinnacle.

19 THE COURT: All right. And ACE?

20 MR. WORKER: ACE? Chubb.

21 THE COURT: That's Chubb?

22 MR. WORKER: Yes, sir.

23 THE COURT: All right. What's your name again?

24 MR. WORKER: Dan Worker.

25 THE COURT: Starr?

1 MS. VARNER: Debra Varner, Your Honor.

2 THE COURT: All right. Very well. Westchester?

3 MR. WORKER: Chubb.

4 THE COURT: Okay. Chubb has many names.

5 Ironshore?

6 MR. GRUBBS: Steven Grubbs, Your Honor, from --
7 representing Ironshore.

8 THE COURT: Okay. XL?

9 MR. FIXTER: John Fixter.

10 THE COURT: Okay. And Argo? Is nobody here from
11 Argo? Were they invited?

12 MR. ROSE: Oh, they were invited many times, Your
13 Honor. Many times. Many times. Many e-mails. Many
14 letters.

15 MR. BERMAN: From us, too. I've got a similar
16 chart with a record of all the correspondence.

17 THE COURT: Okay. And then your insurance carrier
18 is Axis, you said?

19 MR. NELSON: Axis and Aspen.

20 THE COURT: There's two of them?

21 MR. NELSON: Yes. They have a combined policy, a
22 combined aggregate of policies.

23 THE COURT: Okay.

24 All right. I have some thoughts on how I want to
25 proceed. I want to -- what I think I will do, and -- is

1 call back to my chambers those who I want to talk to and,
2 frankly, I'm going to try to deal with some of the
3 lower-hanging fruit first, so to speak. So, I'm going to
4 adjourn and Lesley will come and get who I want to talk
5 with.

6 And, in the meantime, the jury room has its own
7 facilities. The restrooms are right outside the courtroom
8 here.

9 I look forward to talking with you and working on this.
10 Thank you.

11 (Proceedings on the record concluded for October 2,
12 2018.)

13

14 CERTIFICATION:

15 I, Ayme A. Cochran, Official Court Reporter, certify
16 that the foregoing is a correct transcript from the record
17 of proceedings in the matter of Bluestone Coal Corp., et
18 al., Plaintiffs v. Pinnacle Mining Company, et al.,
19 Defendants, Civil Action No. 2:16-cv-06098, as reported on
20 October 2, 2018.

21

22 s/Ayme A. Cochran, RMR, CRR

October 16, 2018

23

Ayme A. Cochran, RMR, CRR

DATE

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